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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 2.106 of the)
Commission's Rules to Allocate)
Spectrum at 2 GHz for Use)
by the Mobile-Satellite Service)

ET Docket No. 95-18

DOCKET FILE COPY ORIGINAL

To: The Commission

REPLY COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads ("AAR"), by its undersigned counsel, pursuant to section 1.415 of the rules of the Federal Communications Commission ("Commission"),^{1/} hereby submits its reply to the comments filed in response to the above-captioned *Third Notice of Proposed Rule Making*^{2/} concerning the relocation of terrestrial Fixed Service ("FS") microwave licensees in the 2165-2200 MHz bands.

I. Introduction

In its initial Comments in response to the *Notice*, AAR stressed two points that are essential for the successful introduction of MSS operations in the 2165-2200 MHz band. First, because effective sharing between FS systems and ubiquitous MSS transceivers is not feasible, incumbent FS systems will need to be relocated to other

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^{1/} See 47 C.F.R. § 1.415.

^{2/} ET Docket No. 95-18, *Third Notice of Proposed Rule Making*, FCC 98-309(released November 25, 1998)("Notice").

frequency bands;^{3/} and second, the Commission must affirm its longstanding policies requiring new entrants to the 2 GHz band to reimburse incumbent licensees for their relocation expenses.^{4/} Having reviewed the comments filed in response to the *Notice*, AAR believes that the record supports a finding that sharing between MSS and FS is, in fact, not feasible, and that the 2 GHz band should therefore be “cleared,” consistent with the fundamental principles of relocation reimbursement defined in the Commission’s *Emerging Technologies* proceeding.

II. Discussion

- a. **There has been no technical demonstration that effective sharing of the 2 GHz band between incumbent FS systems and ubiquitous MSS transceivers is possible.**

As highlighted in AAR’s initial comments, the Commission has repeatedly found that, as a general matter, the prospects for frequency sharing between ubiquitous satellite earth stations, and FS systems are not good.^{5/} In this regard, AAR referenced the CPM Report from WRC-95 that specifically rated the prospects for sharing between MSS and FS as “moderate” to “poor.”^{6/} Although several commenters representing the

^{3/} Comments of AAR (filed February 3, 1999) at 5 (“AAR Comments”)(Given the infeasibility of sharing among MSS and FS, AAR also urged the Commission to consider a simultaneous nationwide retuning of FS systems similar to the process proposed for BAS incumbents in the band. *Id* at Note 22).

^{4/} *Id* at 8.

^{5/} AAR Comments at 5-6 (citing IB Docket No. 98-172 (“18 GHz”); ET Docket No. 98-206 (“11 GHz”); IB Docket No. 97-95 (“V-Band”)).

^{6/} AAR Comments at 7 (citing CPM Report to WRC-95, Chapter 2, Section I, Part A.2.).

satellite industry have endorsed sharing between MSS and FS,^{7/} no commenters have presented detailed technical support for the proposition that such sharing is feasible. In the absence of such confirmation through sound technical analysis, the Commission cannot license MSS for spectrum now occupied by FS without first providing for the relocation of the FS incumbents.

Given that MSS systems, when operational, will cover the entire geographic area of the United States, and given that the prospects for sharing between MSS and FS systems are dim, AAR urges the Commission to adopt a one-time nationwide relocation of incumbent FS systems on terms similar to those proposed for BAS systems.^{8/} A simultaneous, nationwide relocation of all 2 GHz incumbents would be consistent with the Commission's recent findings in its proceeding allocating spectrum above 36 GHz.^{9/} There the Commission found that designating separate spectrum for separate services "will provide the various proposed systems the best opportunity to operate free of interference."^{10/}

^{7/} See Comments of Celsat America, Inc. (filed February 3, 1999) at 1 ("Celsat Comments"); Comments of Constellation Communications, Inc. (filed February 3, 1999) at 7 ("Constellation Comments"); Comments of ICO Services Ltd. (filed February 3, 1999) at 4 ("ICO Services Comments"); Comments of INMARSAT (filed February 3, 1999) at 6 ("INMARSAT Comments").

^{8/} See Notice at ¶ 39.

^{9/} See IB Docket No. 97-95, *Report and Order*, (FCC 98-336), (released December 23, 1998).

^{10/} *Id* at ¶ 18.

AAR also notes that at least one MSS applicant supports a one-time nationwide relocation of incumbent FS systems. In its comments, Iridium LLC ("Iridium") takes the position that, in order for MSS operators to have the necessary certainty that the band will be clear in time to meet their deployment deadlines, "all incumbent licensees" should be cleared from the band.^{11/} Although the *Notice* only proposed nationwide relocation for BAS incumbents, Iridium expressly advocates extending this process to FS incumbents as well: "Iridium urges the Commission to require FS incumbents to meet the same deadline as that applicable to BAS incumbents for relocating from the segments of the 2 GHz band allocated for use by MSS."^{12/}

From AAR's perspective, Iridium's approach will provide the smoothest transfer of the band for all parties concerned. Just as MSS operators require certainty that the band will be clear in time for their deployment deadlines, FS operators require certainty that the integrity of their systems will not be compromised by co-frequency interference from MSS systems.

^{11/} See Comments of Iridium LLC (filed February 3, 1999) at 2 ("Iridium Comments").

^{12/} *Id* at 8.

- b. In adopting a process for the relocation of incumbent systems in the 2 GHz band, the Commission must ensure that the fundamental principles of reimbursement obligations from the *Emerging Technologies* proceeding are affirmed.**

In the *Notice*, the Commission proposed to apply its relocation policies from the *Emerging Technologies* proceeding^{13/} to the relocation of FS incumbents by MSS licensees.^{14/} In response to this proposal, some members of the satellite community are urging the Commission to modify its relocation processes.^{15/} The modifications urged by some MSS applicants would limit their obligations to reimburse FS incumbents for relocation expenses; for example, a number of satellite interests commented that relocation reimbursement rights should be limited to those incumbents licensed prior to the adoption of the *First Report and Order* in this proceeding.^{16/}

As noted above, AAR is not opposed to changes in the Commission's relocation procedures. However, the Commission must preserve the fundamental principle of reimbursement. This principle requires that incumbents be reimbursed for any and all legitimate expenses incurred for the purpose of vacating spectrum for the benefit of a

^{13/} See *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9.

^{14/} See *Notice* at ¶¶ 47-51.

^{15/} See Comments of the Boeing Company (filed February 3, 1999) at 4 ("Boeing Comments"); Constellation Comments at 6; Comments of Globalstar, L.P. (filed February 3, 1999) at 10 ("Globalstar Comments"); ICO Services Comments at 4; Comments of ICO USA Service Group (filed February 3) at 11 ("ICO USA Comments"); INMARSAT Comments at 3; Iridium Comments at 3.

^{16/} See Boeing Comments at 9; ICO Comments at 7.

new service provider. Proposed modifications to the Commission's relocation procedures that circumvent the Commission's reimbursement policies should be rejected.

Throughout the *Emerging Technologies* proceeding, the Commission has affirmed that when incumbent licensees are relocated from their existing spectrum assignments in order to accommodate new systems, the later entrant must reimburse the incumbent operator for its relocation expenses.^{17/} Even in the *Microwave Cost-Sharing* proceeding where the Commission altered the procedure for relocation, the principle of reimbursement was preserved.^{18/} In fact, this policy was affirmed in this very proceeding when the Commission denied a Petition, filed by a coalition of MSS applicants, requesting exemption from the relocation compensation policies adopted in the *Emerging Technologies* proceeding.^{19/}

While AAR recognizes that different services may require different relocation procedures, the Commission must recognize that these procedures must be governed by the underlying principles that require reimbursement of fair and legitimate relocation expenses for the incumbents.

^{17/} See, *Emerging Technologies Proceeding*, 7 FCC Rcd 6886, 6890 (1992), *Second Report and Order*, 8 FCC Rcd 6495 (1993); *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993).

^{18/} See, *Microwave Cost-Sharing First Report and Order*, 11 FCC Rcd 8825 (1996).

^{19/} See *Memorandum Opinion and Order*, (FCC 98-309), (rel. November 25, 1998)(AAR notes that ICO has, yet again, filed for reconsideration of this decision. AAR has opposed ICO's petition as procedurally infirm and wholly lacking in any legal foundation. See *Opposition of AAR* (filed February 22, 1999)).

III. Conclusion

The reallocation of the 2 GHz band can be a success for all parties involved, as long as it is conducted in an equitable and transparent manner. AAR urges the Commission to reject any proposals that would limit the relocation reimbursement obligation of MSS licensees. Instead, the Commission should promote an efficient and equitable simultaneous relocation of incumbent FS systems that ensures that relocated FS incumbents receive just compensation in accordance with the Commission's existing relocation policies.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John Kneuer, hereby certify that I have, this fifth (5th) day of March, 1999, caused a copy of the foregoing "Reply Comments of the Association of American Railroad" to be served by first-class United States mail, postage prepaid upon each of the following:

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